IN THE HIGH COURT OF DELHI

CM(M) No.1151/2007

Tirumala Tirupati Devasthanama & Anr. .....Petitioners
! through: Mr.R.C.Bhalla, Adv.

VERSUS

$ Titech Engineers Pvt. Ltd. ..... Respondent
^ through: None.

CM(M) No.1152/2007

Tirumala Tirupati Devasthanama & Anr. .....Petitioners
! through: Mr.R.C.Bhalla, Adv.

VERSUS

$ Titech Engineers Pvt. Ltd. ..... Respondent
^ through: None.

% DATE OF DECISION: 13.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J. (Oral)**

1. Admittedly, the works in question which are subject matter of dispute between the parties and as awarded to the respondent have to be executed at Delhi. The works are

pertaining to civil construction works at Delhi.

2. The only issue which needs to be decided is, whether in view of clause 2.15 of the agreement between the parties, courts at Delhi cannot entertain the suit, for the reason it is alleged by the petitioner that contract(s) were executed at Tirupati.

3. Clause 2.15 reads as under :-

> "2.15. JURISDICTION
>
> For the purpose of this agreement all the transactions shall be deemed to have taken place within the state of ANDHRA PRADESH and the courts in ANDHRA PRADESH shall have jurisdiction over the matters arising under or out of this agreement."

4. It is settled law that where a cause of action has accrued to a party within the territorial jurisdiction of more than one court, suit can be filed in any court where part of cause of action has accrued. It is equally settled that by consent, parties can exclude jurisdiction of a particular court and confer exclusive jurisdiction on a particular court. It is equally well settled that by consent, no jurisdiction can be conferred on the court if it does not inherently possess one.

5. A perusal of Clause 2.15 of the agreement shows that the author of the document recorded that for the purposes of agreement all transactions shall be deemed to have taken

place within the State of Andhra Pradesh and that Courts in Andhra Pradesh shall have jurisdiction over the matters arising under or out of the agreement.

6. Andhra Pradesh is not a contiguous territorial jurisdiction relating to the territorial jurisdiction of courts. I have put a poster to the learned counsel for the petitioner. Could the suit in question have been filed in the city of Hyderabad? The answer is no. The reason is that no part of cause of action has accrued in the city of Hyderabad. Neither party has its place of business or residence in the city of Hyderabad. Agreement was not executed at Hyderabad. No part of work has to be executed at Hyderabad.

7. What I intend to bring out is that if it was intended that courts only at Tirupati would have jurisdiction for the reason agreement was executed there, the author of the agreement ought to have recorded that for the purposes of the agreement all transactions would be deemed to have taken place within the territorial limits of the city of Tirupati and that courts in Tirupati alone and no other court shall have jurisdiction to take cognizance of any suit.

8. I need not note the catena of decisions on the point which have highlighted that where more than one courts have

jurisdiction over the subject matter of a dispute on account of cause of action accruing in different jurisdictions and it is intended to limit jurisdiction, only then one can oust jurisdiction of others, but intention has to be expressed with clarity. The decisions note that the words like 'alone', 'only', 'exclusive' have to exist in the ouster clause for the reason only when such expressions are to be found could it can be inferred that the intention of the parties was to limit jurisdiction.

9. I clarify that the 3 words noted here-in-above are not exhaustive but are merely illustrative of the language to be used while ousting jurisdiction and exclusively vesting the same in a a particular court.

10. Broadly stated, intention of the parties has to be gathered with respect to the language used in the agreement between the parties.

11. In the instant case, since civil construction works have to be executed at Delhi, indisputably, part of cause of action would accrue in the city of Delhi. Since agreement in question was executed at Tirupati, part of cause of action would also accrue in the city of Tirupati. Thus, courts at Tirupati as also Delhi would have jurisdiction to take cognizance of suits filed pertaining to the agreement.

12. Clause 2.15 relied upon, as noted here-in-above, is too broadly worded. It does not even state that courts at Tirupati would have jurisdiction. The clause states that courts all over Andhra Pradesh would have jurisdiction. The clause cannot confer jurisdiction on all civil courts in Andhra Pradesh for the reason in the State of Andhra Pradesh only place where part of cause of action accrued is the city of Tirupati. Additionally, the clause does not state that only courts at a particular place and no other court would have jurisdiction over the subject matter of a dispute arising under or out of the agreement.

13. Thus, I find no infirmity in the impugned order which has held against the petitioners, resulting in a dismissal of application filed by the petitioners praying that the plaint be returned on the plea that courts at Tirupati alone have jurisdiction to entertain the claim.

14. The petitions are dismissed.

15. No costs.

November 13, 2007 **PRADEEP NANDRAJOG, J.**
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